

## Board of Natural Resources

### **RCW 79.90.080: Board of natural resources--Records--Rules and regulations.**

The board of natural resources acting as the harbor line commission shall keep a full and complete record of its proceedings relating to the establishment of harbor lines and the determination of harbor areas. The board shall have the power from time to time to make and enforce rules and regulations for the carrying out of the provisions of chapters 79.90 through 79.96 RCW relating to its duties not inconsistent with law. [1982 1st ex.s. c 21 § 14.]

### **Discussion on Board of Natural Resources**

The Board of Natural Resources sets harbor lines, approves rules (WACs) for the department, approves sales of second class shorelands, and approves exchanges of state-owned aquatic lands. The Commissioner of Public Lands directs all other decisions and administration of the department. SEE ALSO: Harbor areas; State-owned aquatic lands; Exchanges and acquisitions.

## Bridges and roads

### **RCW 79.91.080: United States of America, state agency, county, or city right of way for roads and streets over, and wharves over and upon aquatic lands.**

Any county or city or the United States of America or any state agency desiring to locate, establish, and construct a road or street over and across any aquatic lands, or wharf over any tide or shore lands, belonging to the state, shall by resolution of the legislative body of such county, or city council or other governing body of such city, or proper agency of the United States of America or state agency, cause to be filed with the department of natural resources a petition for a right of way for such road or street or wharf in accordance with the provisions of RCW

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## Bedlands

### **RCW 79.90.050: "Beds of navigable waters."**

Whenever used in chapters 79.90 through 79.96 RCW, the term "beds of navigable waters" means those lands lying waterward of and below the line of navigability on rivers and lakes not subject to tidal flow, or extreme low tide mark in navigable tidal waters, or the outer harbor line where harbor area has been created.

### **Discussion on bedlands**

The beds of navigable waters, also known as bedlands, are part of state-owned aquatic lands, and are generally those areas which are always covered by water. However, such lands within harbor areas are excluded from the definition of bedlands and are treated differently under the law. SEE ALSO: State-owned aquatic lands; Harbor areas.

The state owns most beds of navigable waters. A small percentage of bedlands were conveyed to private parties early in statehood under now-repealed statutes authorizing the conveyance of certain parts of oyster beds and through early land claims. Today, bedlands cannot be sold or given to any entity.

With the exception of harbor areas, bedlands may be leased only to the owner of abutting private tidelands or shorelands or to the lessee of abutting public tidelands or shorelands. However, if the abutting tidelands, shorelands, or uplands are not improved or occupied, then the department may lease the bedlands to any party for log booming for up to ten years. SEE ALSO: Use authorizations.

79.01.340. The department may grant the petition if it deems it in the best interest of the state and upon payment for such right of way and any damages to the affected aquatic lands.

### **RCW 79.91.100: Public bridges or trestles across waterways and aquatic lands.**

Counties, cities, towns, and other municipalities shall have the right to construct bridges and trestles across waterways heretofore or hereafter laid out under the authority of the state of Washington, and over and across any tide or shore lands and harbor areas of the state adjacent thereto over which the projected line or lines of highway will run, if such bridges or trestles are constructed in good faith for the purpose of being made a part of the constructed line of such a highway, upon payment for any such right of way and upon payment for any damages to those aquatic lands affected.

### **Discussion on bridges and roads**

Bridges and roads are a type of linear project and a type of nonwater-dependent use. SEE ALSO: Linear projects; Nonwater-dependent uses.

Counties, cities, and state agencies have the right to construct bridges across waterways and adjoining state-owned aquatic lands, including harbor areas, if the bridge is part of a highway or road. The government must pay full market value for the right of way, and must pay for any damage to affected aquatic lands. SEE ALSO: Valuation.

Counties, cities, and state and federal agencies may apply to construct a road or street across any aquatic lands. The difference is that a road typically involves filling the aquatic lands, while a bridge goes above them. Again, the government must pay full market value for the right of way, and must pay for any damage to affected aquatic lands. Also, for roads, unlike bridges, the department has the discretion to grant this right-of-way based on whether “it is in the best interest of the state.” In addition, the Washington

State Department of Transportation has certain statutory authorities regarding roads, as described below.

In granting an easement for a bridge or road, especially where the department has greater discretion over roads, the department may require terms in the easement to provide for navigation and commerce, ensure environmental protection, and provide for the department's other statutory obligations and the public benefits of state-owned aquatic lands. In reviewing these applications, the department should apply the same standards as for other linear projects or nonwater-dependent uses. SEE ALSO: Public benefits; Navigation; Environmental protection.

Ideally, the department should be involved at least 18 months in advance in the design and permitting process to create and take advantage of opportunities to improve bridge or road design. In fact, the department should consult with state and local agencies on their capital project plans at least five years in advance of construction. If possible, the department should also consider alternate locations where a bridge or road could be located to serve the same purpose with lesser impacts. If a bridge or road requires regulatory environmental permits, these must be granted before the department will issue the final easement document. SEE ALSO: Regulatory agencies and permits.

Damages for which payment is due include both the initial impacts associated with construction of a bridge and any impacts which occur later as a direct result of the bridge. For example, payment would be due if the bridge collapsed and harmed aquatic habitat, as well as if road run-off caused more subtle but still identifiable impacts. Damage payments may be in the form of non-monetary habitat or environmental enhancements, or public access, if approved by the department. The easement must include a mechanism for obtaining damage payments after initial construction of the bridge.

For bridges and roads owned by a government agency, the department will grant an easement for the expected life of the structure, up to 100 years. That is, the easement will remain in effect so long as the bridge or road is usable and used, but no longer than 100 years. If a bridge or road is to be replaced by a newer bridge or road, or by anything else, the existing easement would expire and a new easement would be developed for the new structure. Also, if a bridge or road is no longer primarily used for its original primary purpose (e.g., car travel, railroad travel), or if the bridge or road is not used at all for more than five years, the department will cancel the easement. The easement document must contain clauses to this effect.

Like other linear projects, the department will require re-opener clauses that allow the department to re-evaluate relevant aspects of the lease at least every ten years to respond to unexpected navigational or environmental concerns. Where appropriate, the re-opener clause should be tied to the schedule of applicable regulatory environmental reviews. If an easement is reopened, the department will require that the government agency cover the costs of any necessary review or bridge or road alterations.

## BRIDGES AND ROADS: DEPARTMENT OF TRANSPORTATION

### RCW 47.12.026 Acquisition of state lands or interests or rights therein -- Easements -- Removal of materials -- Relocation of railroad tracks.

(1) The department of transportation may acquire an easement for highway or toll facilities right of way or for ferry terminal or docking facilities, including the right to make necessary fills, on, over, or across the beds of navigable waters which are under the jurisdiction of the department of natural resources, in accordance with the provisions of RCW 47.12.023, except that no charge may be made to the department of transportation for such an easement.

(2) The department of transportation may obtain an easement for highway or toll facilities purposes or for ferry terminal or docking facilities on, over, or across harbor areas in accordance with RCW 47.12.023 but only when the areas are approved by the harbor line commission as a public place for public landings, wharves, or other public conveniences of commerce or navigation. No charge may be made to the department of transportation for such an easement.

(3) Upon the selection by the department of transportation of an easement for highway or toll facilities right of way or for ferry terminal or docking facilities, as authorized in subsections (1) and (2) of this section, the department of natural resources shall cause to be executed and delivered to the department of transportation an instrument transferring the easement. Whenever the state no longer requires the easement for highway or toll facilities right of way or for ferry terminal or docking facilities, the easement shall automatically terminate and the department of transportation shall, upon request, cause to be executed an instrument relinquishing to the department of natural resources all of its interest in the lands.

(4) The department of transportation, pursuant to the procedures set forth in RCW 47.12.023, may remove sand and gravel and borrow materials and stone from the beds of navigable waters under the jurisdiction of the department of natural resources which lie below the line of ordinary high water upon the payment of fair market value per cubic yard for such materials to be determined in the manner set forth in RCW 47.12.023.

(5) The department of transportation may acquire full jurisdiction over lands under the jurisdiction of the department of natural resources including the beds of navigable waters that are required for the relocation of the operating tracks of any railroad that will be displaced by the acquisition of such railroad property for state highway purposes. The department of transportation may exchange lands so acquired in consideration or partial consideration for the land or property rights needed for highway purposes and may cause to be executed a conveyance of the lands in the manner prescribed in RCW 47.12.150. In that event the department of transportation shall pay to the department of natural resources, as just compensation for the acquisition, the fair market value of the property, including the beds of any

navigable waters, to be determined in accordance with procedures set forth in RCW 47.12.023.

## Discussion on bridges and roads: Department of Transportation

The Washington State Department of Transportation (DOT) has the right to acquire an easement for highways, toll facilities, and ferry terminal or docking facilities, including necessary fills, "on, over or across the beds of navigable waters" under the department's jurisdiction. DOT may obtain a similar easement in harbor areas if the Harbor Line Commission has approved those areas for public landings, wharves, and other public conveniences of commerce or navigation. Such easements are free of charge to DOT. The department must grant an easement to DOT for such facilities, but may require terms in the easement to provide for navigation and commerce, ensure environmental protection, and provide for the department's other statutory obligations and public benefits of state-owned aquatic lands, as described above. DOT must acquire any needed regulatory environmental permits before the department will issue the final easement document.

## BRIDGES AND ROADS: RAILROADS

### RCW 79.91.090: Railroad bridge rights of way across navigable streams.

Any railroad company heretofore or hereafter organized under the laws of the territory or state of Washington, or under any other state or territory of the United States, or under any act of the congress of the United States, and authorized to do business in the state and to construct and operate railroads therein, shall have the right to construct bridges across the navigable streams within this state over which the line or lines of its railway shall run for the purpose of being made a part of said railway line, or for the more convenient use thereof, if said bridges are so constructed as not to interfere with, impede, or obstruct navigation on such streams: PROVIDED, That payment for any such right of way and any damages to those aquatic lands affected be first paid.

### RCW 79.91.110: Common carriers may bridge or trestle state waterways.

Any person authorized by any state or municipal law or ordinance to construct and operate railroads, interurban railroads or street railroads as common carriers within this state, shall have the right to construct bridges or trestles across waterways laid out under the authority of the state of Washington, over which the projected line or lines of railroad will run. The bridges or trestles shall be constructed in good faith for the purpose of being made a part of the constructed line of such railroad, and may also include a roadway for the accommodation of vehicles and foot passengers. Full payment for any such right of way and any damages to those aquatic lands affected by the right of way shall first be made.

## Discussion on bridges and roads: Railroads

Railroad companies and common carriers have rights similar to those of cities and counties to construct railroad bridges over navigable streams or waterways. Again, the railroad must pay for the right-of-way and for damages to the aquatic lands.

Applications for bridges or roads from private parties other than railroads have no special statutory rights, and will be treated and evaluated as other linear projects and nonwater-dependent uses. SEE ALSO: Linear projects; Nonwater-dependent uses.

## Bulkheads

### WAC 332-30-118: Tidelands, shorelands and beds of navigable waters.

(14) State-owned second class tidelands and shorelands will be maintained free of bulkheads and residences except when in the public interest.

(15) The use of beach material from tidelands or shorelands for backfill of bulkheads and seawalls, landfill and as aggregate will not be allowed except when in the public interest.

## Discussion on bulkheads

The department strongly discourages bulkheads because they are extremely destructive to inter-tidal and nearshore aquatic habitats. Besides physically occupying parts of these habitats, bulkheads and similar structures tend to disrupt wave and flow patterns, causing the loss of substrate habitat for many plants and animals. SEE ALSO: Environmental protection.

The WAC above discusses second class tidelands and shorelands because these are usually in more rural areas where the habitat is relatively intact and bulkheads are less likely to be necessary. Bulkheads may more often be approved in urban first class areas, as part of marine terminals or similar developments, but still will only be approved when they are in the larger public interest.

Many bulkheads are installed on private tidelands or shorelands or on uplands abutting the shore where they can greatly affect state-owned aquatic lands. The department does not have direct authority over construction on these lands, but should express its view on bulkheads whenever possible in these cases, such as during permit review processes. SEE ALSO: Regulatory agencies and permits.